IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

WP(C).No. 23657 of 2006(N)

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OS.1056/2004 of ADDL.M.C.,IRINJALAKUDA

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PETITIONER:

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1. BALAGANGADHARAN, AGED 62,
   S/O. MANGALATH KRISHNAN, MATHILAKAMKADAVU,
   PADIYOOR VILLAGE, MUKUNDAPURAM TALUK.

2. SUKUMARI, W/O. BALAGANGADHARAN
   MATHILAKAMKADAVU, PADIYOOR VILLAGE,
   MUKUNDAPURAM TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:

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1. ANILKUMAR, S/O. BALAGANGADHARAN,
   MATHILAKAMKADAVU, PADIYOOR VILLAGE,
   MUKUNDAPURAM TALUK.

2. HIMA ANILKUMAR, W/O.ANILKUMAR,
   MATHILAKAMKADAVU, PADIYOOR VILLAGE,
   MUKUNDAPURAM TALUK.

BY ADV. SRI.V.M.KRISHNAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) No. 23657/2006

**APPENDIX**

PETITIONER'S EXHIBITS

P1 : COPY OF THE AMENDMENT APPLICATION IN IA NO.2964/05 IN OS NO.1056/04 DATED 24/08/2005.

P2 : COPY OF THE ORDER PASSED IN IA 2683/06 IN OS 1056/04 DATED 24/08/2006.

P3 : COPY OF THE AMENDMENT APPLICATION IA NO.2964/05 IN OS NO.1056/04 DATED 18/10/05.

// TRUE COPY //

PA TO JUDGE.

jg

**PIUS C.KURIAKOSE, J.**

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**W.P.(C) No. 23657 of 2006**

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**Dated, this the 14th day of August, 2007**

**J U D G M E N T**

The petitioners in this writ petition are plaintiffs in a suit for partition. In the pending suit, they filed an application for amendment of the pleadings and to incorporate a prayer for declaration. The respondent defendants raised an issue that the court fee paid is not sufficient. The court below passed the impugned order, Ext.P2, stating that court fee is payable under Section 25(d)(i) and the valuation made by the plaintiffs is not proper, which is substantiated by the court below rendering a decision that the court fee has to be paid on the market value on the date of presentation of the plaint.

2. I have heard the submissions of Shri.G.Sreekumar, learned counsel for the petitioners and those of Shri.Ranjith Thampan for the respondents. Shri.G.Sreekumar would assail the impugned order on the various grounds raised in the writ petition and would cite the judgment of this Court in **Kochu Muhammed** Vs. **Jacob Alias Chacko**, reported in 1963 KLJ 560. He also relied on the judgments of the Supreme Court in **Ningawwa** Vs. **Byrappa Shiddappa Harekhrabar and Others**, reported in AIR 1968 SC 956 and in **Prem Singh** Vs. **Birbal**, reported in 2006 (2)

KLT 868. Copy of the plaint prior to amendment as well as copy of the amendment application were made available for my perusal.

3. Shri.Ranjith Thampan would submit that there is no infirmity on the impugned order warranting invocation of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. Though, Shri.G.Sreekumar made very strenuous submissions, having gone through the impugned order by the perspectives applicable to the exercise of powers of this Court under Article 227, which is a visitorial jurisdiction, I am unable to agree that the impugned order is vitiated to the extent justifying invocation of the supervisory jurisdiction. Towards the end of the submission, Shri.G.Sreekumar also would submit that the petitioners may not insist upon the prayer for declaration, which is the basis on which the learned Munsiff has directed them to revalue the suit. Therefore, even as I dispose of the writ petition sustaining the impugned order, I grant liberty to the petitioners for informing the court below that they are not pressing the prayer for declaration. If the court below is so informed, the court below will treat the present impugned order as unnecessary and proceed with the suit on the basis that the suit is one simpliciter for partition.

**(PIUS C.KURIAKOSE, JUDGE)**

jg